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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 798

THE SIOUX TRIBE OF INDIANS,

Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

The Sioux Tribe of Indians, by its attorney, Ralph H. Case, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above case April 7, 1941, Court of Claims Docket Number C-531-(8), motion for new trial overruled October 6, 1941 (R. 30).

Opinion Below.

The opinion of the Court of Claims is not yet reported.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

Statement.

The petitioner comprises those Indians or their descendants of the Sioux Tribe who were parties to the Treaty of

1*d*

April 29, 1868 (15 Stat. 635). That treaty set apart a permanent reservation for the Sioux Tribe, the easterly boundary of which was the east bank of the Missouri River, but including two small reservations on the east bank of the river (now the Crow Creek Reservation).

The treaty further provided for the cession of all lands east of the Missouri River to the United States, except Crow Creek Reservation.

The proposed treaty included the bands of the Sioux Tribe living on the east side of the Missouri River. These were the Upper Yanktonai and the Lower Yanktonai bands of Sioux Indians. They objected to the terms of the treaty but signed when they were assured by the Treaty Commissioners that an effort would be made to extend the permanent reservation so as to include the James River country east of the Missouri River. The Yanktonai bands, however, did not move onto the permanent reservation but remained in the area east of the Missouri River.

By three Executive Orders in 1875 and one in 1876 (R. 9-14) lands on the easterly side of the Missouri River were "withdrawn from sale and set apart for the use of the several tribes of the Sioux Indians as an addition to their present reservation in said territory" (Dakota). The Yanktonai bands, in common with the other bands of the Sioux Tribe, continued to use and occupy the territory east of the Missouri River covered by the Executive Orders.

In 1879 and in 1884, by Executive Orders (R. 16, 18), all of the land added by the previous Executive Orders was restored to the public domain. The Sioux Indians living on the east side of the Missouri River were moved to the west side of the Missouri River except a small number of the Lower Yanktonai band, which was removed to the Crow Creek Indian Reservation.

The petitioner claims that the Executive Orders of 1875 and 1876 gave the Sioux Tribe the same right to the lands

added to the permanent reservation as the Treaty of 1868 granted to the Sioux Tribe in the permanent reservation. The Sioux Tribe was never consulted in regard to the orders restoring these lands to the public domain. The tribe has never received compensation in any form or in any amount for the property right in the lands which were taken from them by the Executive Orders of 1879 and 1884. The area involved is 5,667,016.74 acres (R. 5).

Statutes Involved.

The material provisions of the Jurisdictional Act under which this cause of action is brought are as follows (Act of June 3, 1920, 41 Stat. 728).

> "That all claims of whatsoever nature which the Sioux Tribe of Indians may have against the United States, which have not heretofore been determined by the Court of Claims, may be submitted to the Court of Claims with the right of appeal to the Supreme Court of the United States by either party, for determination of the amount, if any, due said tribe from the United States under any treaties, agreements, or laws of Congress, or for the misappropriation of any of the funds or lands of said tribe or band or bands thereof, or for the failure of the United States to pay said tribe any money or other property due; and jurisdiction is hereby conferred upon the Court of Claims, with the right of either party to appeal to the Supreme Court of the United States, to hear and determine all legal and equitable claims, if any, of said tribe against the United States, and to enter judgment thereon.
>
> "Sec. 2. That if any claim or claims be submitted to said courts they shall settle the rights therein, both legal and equitable, of each and all the parties thereto, notwithstanding lapse of time or statutes of limitations, and any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an offset in such suits or actions, and the United States shall be allowed credit for all

sums heretofore paid or expended for the benefit of said tribe or any band thereof. The claim or claims of the tribe or band or bands thereof may be presented separately or jointly by petition, subject, however, to amendment, suit to be filed within five years after the passage of this Act; and such action shall make the petitioner or petitioners party plaintiff or plaintiffs and the United States party defendant, and any band or bands of said tribe or any other tribe or band of Indians the court may deem necessary to a final determination of such suit or suits may be joined therein as the court may order. Such petition, which shall be verified by the attorney or attorneys, employed by said Sioux Tribe or any bands thereof, shall set forth all the facts on which the claims for recovery are based, and said petition shall be signed by the attorney or attorneys employed, and no other verification shall be necessary. Official letters, papers, documents, and public records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said tribe or bands thereof to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys for said tribe or bands of Indians." (R. 2-3)

The material provisions of the Treaty of April 29, 1868 (15 Stat. 635) are as follows:

"Article 2. The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all ex-

isting reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents and employes of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided."

"Article 12. No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians, occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him, as provided in article 6 of this treaty."

The material provisions of the Executive Orders adding lands to the permanent reservation of the Sioux Tribe are as follows:

"Commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same; thence east with said parallel of latitude to the ninety-ninth degree of west longitude; thence south with said degree of longitude to the east bank of the Missouri River; thence up and with the east bank of said river to the place of beginning, be, and the same

hereby is, withdrawn from sale and set apart for the use of the several tribes of Sioux Indians, as an addition to their present reservation in said Territory."

(January 11, 1875. Kappler, Vol. 1, 898.)

"Commencing at a point where the one hundred and second degree of west longitude intersects the forty-sixth parallel of north latitude; thence north on said one hundred and second degree of longitude to the south bank of the Cannon Ball River; thence down and with the south bank of said river to a point on the east side of the Missouri River opposite the mouth of said Cannon Ball River; thence down and with the east bank of the Missouri River to the mouth of Beaver River; thence up and with the south bank of Beaver River to the one hundredth degree of west longitude; thence south with said one hundredth degree of longitude to the forty-sixth parallel of latitude; thence west with said parallel of latitude to the place of beginning, be and the same hereby is, withdrawn from sale and set apart for the use of the several tribes of Sioux Indians, as an addition to their present reservation in said Territory."

(March 16, 1875. Kappler, Vol. 1, 884.)

"It is hereby ordered that that portion of the public domain in the Territory of Dakota lying south of an east and west line from the northwest corner of the Yankton Indian Reservation to the ninety-ninth degree of longitude, and between said longitude and the Missouri River on the west and the Yankton Indian Reservation on the east, be, and the same hereby is, withdrawn from sale and settlement, and set apart for the use of the several tribes of Sioux Indians as an addition to their present reservation in said territory."

(May 20, 1875. Kappler, Vol. 1, 898.)

"Commencing at a point on the south bank of Beaver River, intersected by the one hundredth degree of west longitude; thence in a direct line to the east corner of the Fort Rice Military Reservation; thence in a south-

western direction along the said military reservation to the east bank of the Missouri River; thence with the east bank of the Missouri to the mouth of Beaver River; thence up and with the south bank of Beaver River to the place of beginning, be, and the same hereby is, withdrawn from sale and set apart for the use of the several tribes of Sioux Indians as an addition to their present reservation in said Territory."

(November 28, 1876. Kappler, Vol. 1, 884.)

The material provisions of the Executive Orders restoring to the public domain the land last above described are as follows:

"It is hereby ordered that all that portion of the Sioux Indian Reservation in Dakota Territory created by Executive orders dated January 11, March 16, and May 20, 1875, and November 28, 1876, lying within the following-described boundaries, viz: Beginning at a point where the west line of the Fort Randall Military Reservation crosses the Missouri River; thence up and along said river to the mouth of American Creek; thence up and along said creek to the ninety-ninth degree of west longitude; thence south along said degree to a point due west from the northwest corner of the Yankton Indian Reservation; thence due east to the northwest corner of said reservation; thence due south to the north boundary line of Fort Randall Military Reservation; thence following said boundary line northwesterly to the northwest corner of said military reservation; thence south on the west boundary line of said reservation to the place of beginning. And also the following-described land: Beginning at the east bank of the Missouri River at the mouth of Medicine Knoll Creek; thence up and along the Missouri River to the boundary line of Fort Sully Military Reservation; thence northeasterly along said boundary line to the southeast corner of said military reservation; thence northwesterly along the boundary line of said reservation to the northeast corner thereof; thence due north to the east bank of the Missouri River; thence

up and along the east bank of said river to the mouth of the Bois Cache; thence due north to the east bank of said river to the south line of township 129 north; thence east along said township line to the line between ranges 78 and 79 west; thence north along said range line to Beaver Creek, or the north boundary line of the reservation set aside by Executive order of March 16, 1875; thence west along said creek to the east bank of the Missouri River; thence up and along said east bank to the southeast corner of Fort Rice Military Reservation; thence northeasterly along said military reservation to the east corner of said reservation; thence in a direct line to a point on the south bank of Beaver Creek where said creek is intersected by the one hundredth degree of west longitude; thence south with said one hundredth degree of longitude to the forty-sixth parallel of north latitude; thence east with said parallel of latitude to the ninety-ninth degree of west longitude; thence south with said degree of longitude to its intersection with the north boundary line of the old Sioux or Crow Creek Reservation; thence west along the north boundary line of said reservation to the eastern boundary line of the old Winnebago Reservation; thence north along said east line to the northeast corner of said Winnebago Reservation; thence west along the north boundary line of said reservation to the middle channel of Medicine Knoll Creek; thence down the middle channel of said creek to the place of beginning, be, and the same hereby is, restored to the public domain."

(August 9, 1879. Kappler, Vol. 1, 889.)

"It is hereby ordered that the lands embraced within the three existing Executive additions to the Great Sioux Reservation, in Dakota, east of the Missouri River, viz, the one opposite the Standing Rock Agency, the one opposite the mouth of Grand River and the site of the old Grand River Agency, and the one opposite the mouth of Big Cheyenne River and the Cheyenne River Agency, be, and the same are hereby, restored

to the mass of the public domain, the same being no longer needed for the purpose for which they were withdrawn from sale and settlement."

(March 20, 1884. Kappler, Vol. 1, 884.)

The material provisions of the statutes governing the sale of liquor to Indians and the introduction of liquor into the Indian country are as follows:

"That if any person shall sell, exchange, give, barter, or dispose of any spirituous liquor or wine to any Indian under the charge of any Indian superintendent or Indian agent appointed by the United States, or shall introduce or attempt to introduce any spirituous liquor or wine into the Indian country, such person, on conviction thereof before the proper district court of the United States, shall be imprisoned for a period not exceeding two years, and shall be fined not more than three hundred dollars: PROVIDED, HOWEVER, That it shall be sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, if it be proved to be done by order of the War Department or of any officer duly authorized thereto by the War Department."

(Act of February 13, 1862. 12 Stat. 339.)

"Sec. 2139. No ardent spirits shall be introduced under any pretense, into the Indian country. Every person, except an Indian, in the Indan country, who sells, exchanges, gives, barters, or disposes of any spirituous liquors or wine to any Indian under the charge of any Indian superintendent or agent, or introduces or attempts to introduce any spirituous liquor or wine into the Indian country, shall be punishable by imprisonment for not more than two years, and by a fine of not more than three hundred dollars. But it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, that the acts charged were done by order of or under authority from the War Department, or any

officer duly authorized thereunder by the War Department."

(United States Revised Stats. 1873, Act of June 22, 1874. 18 Stat. Vol. 1, 113.)

"Section twenty one hundred and thirty nine is amended by striking out, in lines two and three, the words 'except an Indian in the Indian country'."

(Act of February 27, 1877, 19 Stat. 244.)

AN ACT

To Revise and Consolidate the Statutes of the United States, in Force on the First Day of December, anno Domini, One Thousand Eight Hundred and Seventy-three.

"Sec. 2139. No ardent spirits shall be introduced, under any pretense, into the Indian country. Every person [except an Indian, in the Indian country][1] who sells, exchanges, gives, barters, or disposes of any spirituous liquors or wine to any Indian under the charge of any superintendent or agent, or introduces or attempts to introduce any spirituous liquor or wine into the Indian country, shall be punishable by imprisonment for not more than two years, and by a fine of not more than three hundred dollars. But it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, that the acts charged were done by order of or under authority from the War Department, or any officer duly authorized thereunto by the War Department."

(United States Revised Statutes, 2nd Ed., 1878, p. 373.)

Questions Presented.

Whether the Sioux Tribe of Indians by virtue of the Executive Orders of January 11, 1875, March 16, 1875, May

[1] Note: The words shown in brackets are in italics. "The portions of the statutes repealed are printed in italics and included in brackets." Geo. S. Boutwell, Commissioner. (U. S. R. S., 2nd Ed., 1878, p. 5.)

20, 1875, and November 28, 1876, obtained title to and a vested interest in the lands by said orders added to the permanent reservation created by the Treaty of April 29, 1868 (15 Stat. 635), such that said title and interest could not be taken from the Sioux Tribe without payment of just compensation.

Whether the Executive Orders of August 9, 1879 and of March 20, 1884, restoring to the public domain the area previously set apart for the use of the Sioux Tribe, and attached to as a part of the permanent reservation of said tribe, is such a taking of private property for public use as to require the payment of just compensation under the Constitution.

Whether an Executive Order withdrawing from the public lands a specified area and attaching such area to an existing Indian treaty reservation, in terms conforming to the terms of a treaty providing for such addition, vests in the Indian Tribe such an interest in the lands covered by the Executive Order that the Indian Tribe cannot be divested of such interest without payment of just compensation.

Whether the Congress, by the Act of June 30, 1919, which expressly prohibited the creation of, or additions to, Indian reservations by Executive Order from and after the date of the act, so recognized the prior Executive practice and so acquiesced in the issuance of all previous Executive Orders similar to those prohibited by the act as to validate all such previous orders, especially in view of the fact that the Act of June 30, 1919, did not revoke nor question such Executive Orders issued prior to that date.

Whether the plain and unambiguous terms of a grant are subject to the undisclosed purposes of the grantor and thereby subject the grant to revocation at will by the grantor, even though it is shown that the reason for the revocation did not in fact exist at the time of revocation.

Specifications of Error to be Urged.

1. The court below erred in three instances in making a distinction between the expression "use" contained in the Executive Orders and the words "use and occupation", as set out in the following holdings:

> "In these four Executive Orders there is the expression 'use' of the several tribes and not the words 'use and occupation' or 'use or occupation' as expressed in the treaty." (R. 23)

> "The actual fee is always in the United States but the use of the terms 'use and occupation', 'use or occupation', or 'occupation' carry such an equitable title in the Indians that the Congress of the United States has always recognized that compensation should be given the Indians for the lands when they are taken." (R. 24)

> "In the instant case the Executive Orders of 1875 and 1876 were withdrawn in 1879 and 1884. For over sixty years the Sioux Indians have not had the use of these lands and even during the periods from 1875 to 1879 and 1884 they had only the use which permitted hunting of buffalo and other game." (R. 29)

2. The court erred in relying upon the statement made by the Commissioner of Indian Affairs to the effect that the Act of February 27, 1877 (19 Stat. 244), amended the United States code of 1873 in respect to the suppression of the liquor traffic in the Indian country, as set out in the following:

> "In 1879, the Secretary of the Interior, who had been advised by the Commissioner of Indian Affairs, recommended that the lands, with certain exceptions, so withdrawn from settlement and sale under the four orders above mentioned, could be restored to the public domain and the liquor traffic with the Indians suppressed, under the act of February 27, 1879 (19 Stat. 244)." (R. 23)

3. The court erred in holding that the additions to the Sioux Reservation made by the Executive Orders was "of a temporary nature", in the following holding:

> "In the case before us, although the Executive Orders did not contain words of a temporary nature, nevertheless, the recommendation of the Commissioner of Indian Affairs to the Secretary of the Interior, on which these Executive Orders were based, showed that the additions were solely for the purpose of regulating the liquor traffic on the Missouri River and the protection of these Indians on their permanent reservation from the injurious and harmful effects of such traffic." (R. 27)

4. The court erred in construing the words of the Treaty of April 29, 1868 (*supra*) in the following holding:

> "The use of the words in the treaty 'or in such territory as may be added to this reservation for the use of said Indians' clearly intended such lands which may be added thereto, either by treaty, which was the sole way by which Congress dealt with these Indian Tribes up to 1871, or by act of Congress after 1871. Congress did not intend by these words to vest in the President the fee to the public domain, or the power to dispose of the title to it, a power which was, under the Constitution, in the Congress alone." (R. 27)

5. The court erred in holding that Congressional ratification by a specific act of Congress was necessary to give full effect to the Executive Orders here in question in the following holding:

> "It would have required some act of Congress by prior legislation, or subsequent ratification of the Executive Orders, in order to divest the United States of its title to the land and place it elsewhere." (R. 27)

6. The court erred in holding that the Sioux Tribe did not obtain by the Executive Orders any interest for which

the United States are responsible, either in law or in equity in the following holding:

> "The Sioux Nation did not get by these four Executive Orders, adding land to their permanent reservation, any interest for which the Government is responsible either in law or in equity." (R. 28)

7. The court erred by taking into consideration the several errors heretofore set out and by process of adding error to error, reaching the conclusion that the undisclosed intent of the United States left with the United States the power to revoke the Executive Orders of 1875 and 1876 and that the several Executive Orders were temporary in their nature and could be withdrawn at any time, in the following holding:

> "Taking all these matters into consideration, it seems clear that in issuing the Executive Orders of 1875 and 1876, which added some six million and odd acres to the Sioux treaty reservation, it was intended as a temporary expedient in order to protect the Indians from the injurious and nefarious liquor traffic, and the orders were temporary in their nature and could be withdrawn at any time and were withdrawn in 1879 and 1884." (R. 30)

Reasons for Granting the Writ.

The petitioner asserts that its property was taken from it without the payment of just compensation, thereby raising a consitutional question.

The Court of Claims has held that the President of the United States was without power to issue the Executive Orders of 1875 and 1876, thereby raising the question of the right of the Executive to issue such orders as was done by the Executives over a period of fifty years. If the decision of the Court of Claims is final then none of the Executive Orders creating or enlarging Indian reservations is of any effect and any land within such reservations, title to which

has not passed to an individual allottee by patent, can be taken from the Indian Tribe without payment of compensation. This question is not only vital to the rights of petitioners, but is so important to the rights of Indians occupying reservations created or extended by Executive Orders that the question itself should be decided.

The amount involved is substantial in area of land involved and at the most conservative valuation of the property rights taken from the Sioux Tribe by the Executive Orders of 1879 and 1884, the amount in dollars is likewise substantial.

The court below in its decision made the following statement:

> "in no instance can we find a statement of what interest, if any, was given to Indian Tribes in lands set apart by Executive Orders for their use where such Indian Tribes had a permanent treaty reservation." (R. 27)

In view of the large number of Executive Orders creating or enlarging Indian reservations it would seem that the statement by the court below is equivalent to a request for a decision on the question of such Executive Orders.

Finally, the petitioner urges that the Executive Orders of 1879 and 1884 were based upon a specious and erroneous assumption, to wit, that the statutes of the United States had been amended in regard to the control of the liquor traffic among Indians; the Court of Claims adopted this specious and erroneous assumption, when in fact the statutes had not been so amended. Thereby the petitioner has been deprived of its property right in the lands restored to the public domain. It has not been paid therefor, and therefore urges that the writ should be granted in order that these several questions and the rights of the petitioner may be determined.

BRIEF.

The question here is whether the Sioux Tribe obtained rights under the Executive Orders of 1875 and 1876 and whether the later orders of 1879 and 1884 took those rights away from the tribe without compensation.

The record shows that a substantial number of Sioux Indians were living in the area east of the Missouri River ceded to the United States by the Sioux Treaty of 1868. These members of the tribe remained in their customary habitat after the Treaty of 1868 was signed. They were offered a hope by the Treaty Commission that the Commissioners would endeavor to secure a change in the reservation boundaries to include the lands east of the Missouri River. Numerous recommendations were made by Indian agents in the Sioux country for the establishment of agencies on the easterly side of the Missouri River to care for the Sioux living in that territory. Without doubt the liquor traffic was a nuisance on the easterly side of the Missouri River.

There were then several reasons for the issuance of the Executive Orders of 1875 and 1876. The Executive Orders, standing alone, created an interest in the Sioux Tribe. These orders cannot be said to spring from one reason, when the record shows other vital reasons existed for the issuance of the orders.

Unquestionably the Sioux Tribe took the use of the land in question by the authority contained in the Executive Orders. A substantial portion of the Tribe was already in actual occupation of the area. The words "for the use of the Sioux Tribe" are the exact words used in the Treaty of 1868, which treaty contemplated additions to the permanent reservation of the Sioux Tribe. No thin distinction between the word "use" and the words "use and occupation" should have been made by the court below. The

term "use and occupation" is a doublet, of which there are many in the law, such as "last will and testament" and many others well known to this Court.

The court below held that the liquor question was the only basis for the issuance of the Executive Orders of 1875 and 1876. Thereafter the court adopted the theory that the restoration to the public domain by the issuance of the subsequent orders of 1879 and 1884 was justified because the statutes relating to the suppression of the liquor traffic had been so amended that the liquor traffic was no longer a menace.

The statutes speak for themselves and are set out in this petition. No change was made in the law so far as white bootleggers were concerned.

The Code Commission of 1873 inserted in Section 2139 the words, "except an Indian in the Indian country" which gave no special privileges to whites but only to an Indian in the Indian country. At no time has any one suggested, as the record will show, that the Indians were engaged in the sale of liquor. At all times the white bootleggers could have been prosecuted under the statute. The error of the Code Commission, of course, was stupid and apparently was incorporated in the code of 1873 carelessly, like hundreds of other errors in that code. The correction by the Act of February 27, 1877 (19 Stat. 244), simply eliminated from the section the words "except an Indian in the Indian country". At all times there was ample statutory authority for the suppression of the liquor traffic.

The real reason for the issuance of the orders restoring the land to the public domain in 1879 and 1884 was that white citizens wanted these lands for settlement.

The defendant below questioned the power of the Executive to issue the Executive Orders of 1875 and 1876. Our question here is not restricted to the power of the Executive but contains a further question, that is, whether the act of

the President, had he the power or not, set up property rights in these innocent third parties to the transaction.

We believe that the power of the President cannot now be questioned. Section 27 of the Act of June 30, 1919 (41 Stat. p. 3) prohibited the President from the further exercise of this identical power, that is, creating or enlarging Indian reservations by Executive Order. The Congress might have passed, but did not pass, such an act at any time from and after the assumption of the power by the President in the period just after the war between the States.

The Congress holds and exercises the delegated sovereignty of the people of these United States. As such, and under the Constitution, the Congress has control over the public lands. The Congress, however, from 1870 to 1919 acquiesced in the issuance of Executive Orders concerning Indian reservations and we insist that when the Congress terminated the practice of the Executive by the Act of June 30, 1919 (*supra*) without repealing or questioning any Executive Orders issued prior thereto, that the Congress, itself, ratified and confirmed all such previous Executive Orders.

Summary.

If the President had the power to issue the orders, the orders certainly set up property rights in the Sioux Tribe.

If the action of the President was beyond his authority, still it set up rights in the innocent third parties to the transaction.[2]

If the President exceeded his power and the Congress acquiesced therein over a long period of time then, as was held in *United States* v. *Midwest Oil Co.* (236 U. S. 459), the acquiescence amounts to ratification.

[2] In similar circumstances the *ultra vires* act of an officer or directors of a corporation which sets up rights in innocent third parties cannot be relied upon to destroy the rights, although the officer or directors may be held personally responsible for the act.

If the President exceeded his power and the Congress acquiesced and thereafter the Congress terminated the power without questioning its long continued use, then the Congress has affirmatively ratified those Executive Orders issued prior to the termination of the Executive practice (Act of June 30, 1919 (*supra*)).

Conclusion.

We submit that this case should be reviewed; that the legal effect of Executive Orders issued prior to June 30, 1919, creating or enlarging Indian Reservations should be determined; that not only the rights of these petitioners but the rights of other Indian tribes equally involved should be determined.

We submit that the Sioux Tribe had a property right in the lands east of the Missouri River, that it was taken from them, and that the tribe is entitled to a decision by this Court holding that tribe entitled to just compensation for the taking of its property.

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